IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1241 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJKOT MUNICIPAL CORPORATION

Versus

NATHUBHAI MERAMBHAI BHARWAD

Appearance:

MR AK CLERK for the Petitioner.

MR YOGESH S LAKHANI for Respondent Nos. 1-4

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 25/08/2004

ORAL JUDGEMENT

The petitioner is the original defendant of Regular Civil Suit No.1916 of 1996. The respondents herein are the original plaintiffs of the said suit.

The said suit is filed for a declaration and

injunction and it is prayed by the plaintiffs in the suit that the defendant-Corporation has no right to demolish their huts without following the due process of law. In the said suit, on behalf of the plaintiffs, an application for temporary injunction at Exhibit 5 was preferred for getting interim injunction, restraining the defendant from demolishing their huts without following the due process of law and the trial court rejected the said application, against which the respondents herein filed a miscellaneous appeal under Order 43 of the Code of Civil Procedure.

The appellate court, after considering the facts and circumstances case, partly allowed the said appeal and the petitioner herein was given liberty to evict the original plaintiffs from the suit land after following the due process of law, and, in the meantime, the petitioner-original defendant was directed to maintain status quo.

It is the aforesaid order which is impugned in this revision.

It is required to be noted that the suit is of 1996 and the appellate court, while disposing of the appeal, has already directed the trial court to dispose of the suit within six months from the date of the order. More than seven years' period has passed thereafter.

It cannot be said that the appellate Judge, while deciding the Miscellaneous Appeal has committed any jurisdictional error. The learned Advocate for the respondents has placed reliance upon the decision of the Apex Court in Managing Director, HAL v. Ajit Prasad Tarway, AIR 1973 SC 76, wherein the Supreme Court has taken the view that if the order of the lower appellate court is within its jurisdiction, the High Court should not interfere under Section 115 of the Code of Civil Procedure, even if the order is right or wrong, or in accordance with law or not, unless it has exercised its jurisdiction illegally or with material irregularity. It is also required to be noted that after the amendment in CPC, revision against such an interlocutory order is not maintainable.

Considering the aforesaid aspect of the matter, I do not find any substance in this CRA. The same is accordingly dismissed. Rule is discharged. Ad interim relief is vacated. No costs.

Since the appellate court has already given

direction to the trial court to dispose of the suit within six months, if the suit is still not disposed of in view of the pendency of this revision, the trial court is directed to dispose of the said suit within a period of six months from today.

Writ to be sent to the trial court forthwith without any delay.

25th August, 2004 (P.B. Majmudar, J.)

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(apj)